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BEFORE THE
Federal Communications Commission
WASHINGTON, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Closed Captioning and Video
Description of Video Programming

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MM Docket No. 95-176

COMMENTS OF BLOOMBERG INFORMATION TELEVISION

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COMMENTS OF BLOOMBERG INFORMATION TELEVISION

Bloomberg Information Television ("BIT"), a division of Bloomberg L.P., hereby files these comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

BIT is a new and innovative 24-hour news and information service, seen by approximately 3.5 million MVPD subscribers nationwide. Launched in 1994, BIT utilizes a text-based, multi-media format consisting of primarily textual and graphic information (in fact, at all times, the textual and graphic information constitutes nearly two-thirds of the total screen). BIT's content-intensive, text-based format was created specifically to make the service fully accessible without the

¹ In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report, MM Docket No. 95-176, FCC 97-4 (released January 17, 1997) ("Notice").

need for an audio track. Indeed, BIT's goal was to create a service that could be used at work with the sound turned off. Thus, BIT is designed in a manner that is fully accessible to the hearing impaired without closed captions.

Congress gave the Commission the authority to exempt individual program services from the closed captioning rules. The Commission should use that authority to accommodate new multi-media services such as BIT, whose innovative means of conveying information should be fostered, rather than hindered. This is particularly true because BIT is a start-up service in the highly competitive news and information programming business. The substantial costs of closed captioning would therefore be especially burdensome for BIT. Moreover, as shown below, closed captioning the BIT service would block substantial portions of the textual material which is the primary information BIT conveys. Thus, closed captioning would actually make BIT less accessible to the hearing impaired.

Finally, BIT supports the creation of a class exemption for "primarily textual" services in order to prevent closed captioning from being unnecessarily imposed on services that are already accessible to the hearing impaired. The definition of primarily textual should be sufficiently broad to accommodate multi-media formats, such as BIT's, which, although providing some audio content, nonetheless use text as the primary means of conveying information.

II. BIT SHOULD BE EXEMPT FROM THE CLOSED CAPTIONING REQUIREMENTS OF SECTION 713

Imposition of the closed captioning requirements on BIT would be economically burdensome and unnecessary because BIT already is accessible to the hearing impaired. Therefore, BIT should be granted an exemption from the closed captioning requirements as part of this proceeding.²

² Although the Notice concentrates on exemptions pertaining to "classes of programming," the plain language of the statute clearly authorizes the Commission to exempt individual services as part of this proceeding by stating "the Commission may exempt by regulation programs, classes of programs, or services." 47 U.S.C. § 613(d)(1) (emphasis added). See TVA v. Hill, 437 U.S. 153 (1978); see also Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175 (1989) (interpretation of a statute must be based on its plain language). The legislative history to Section 713(d)(1) verifies that this plain language allows the Commission to exempt individual program services in addition to classes of programming: "Section [713(d)(1)] allows the Commission to exempt specific programs, or classes of programs, or entire services from captioning requirements." H.R. Rep. No. 204, 104th Cong., 1st Sess. 114 (1995) ("House Report") (emphasis added).

As a policy matter, the Commission should grant individual exemptions during this rulemaking process in order to conserve resources and preclude administrative inefficiencies. It would serve absolutely no purpose for a service such as BIT, which so clearly warrants an exemption from the closed captioning requirements, to be denied an individual exemption in this proceeding, only to reiterate its case in a subsequent, separate proceeding under the "economically burdensome" or "undue burden" analysis. Thus, because BIT clearly meets the economically burdensome test, the Commission can and should exempt BIT from the closed captioning requirements as part of this proceeding pursuant to Section 713(d)(1).

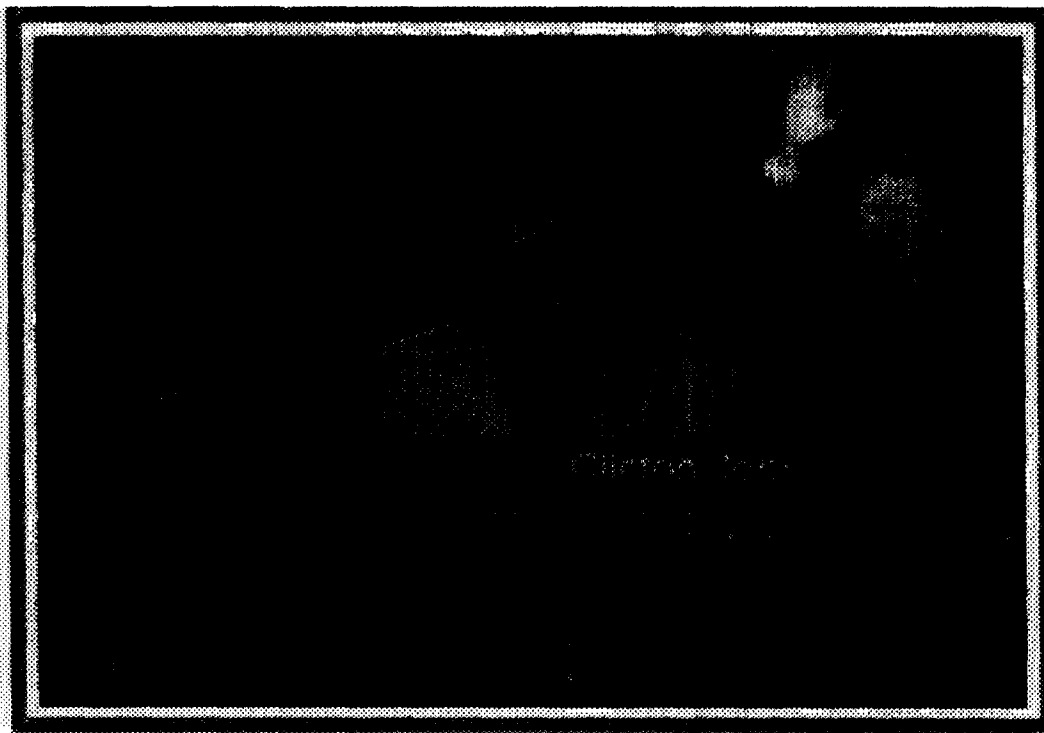
A. BIT Already Is Fully Accessible To The Hearing Impaired.

1. BIT's primary means of conveying information is through text, making it fully accessible without the need for closed captions.

BIT's specially designed and unique multi-media format already makes it fully accessible to the hearing impaired. As shown in Diagram A,³ the dominant feature of the BIT screen is a three-part graphic overlay which BIT calls the "L" (because it runs down the left side and across the bottom of the screen and is therefore shaped like an "L").

DIAGRAM A:

THE BIT MULTI-MEDIA SCREEN



³ See also the enlarged pictorial of the BIT screen, attached hereto as Exhibit A.

The "L" covers the vast majority of the BIT screen and continuously provides real-time, up-to-the-minute information in three separate text boxes:⁴

- News and Human Interest. The upper left text box provides a continuous, constantly updated, 20-minute loop of top stories in world and national news, sports, entertainment, technology, lifestyles, and other areas of human interest. Tabs on the top border of the text box display the story topic and the topic of the next story. Because each story may be 3-4 pages in length, page numbers are clearly indicated in the lower right hand corner.
- Worldwide Weather. Located in the middle left section of the screen, the worldwide weather text box provides a continual scroll of weather forecasts for cities in every state and selected foreign countries. Tabs along the top border indicate the city for the forecast currently displayed and the city of the upcoming forecast.
- Full Financial Coverage. The bottom leg of the "L" provides the full panoply of business and financial market information, including stock quotes, commodities and futures quotes, the S&P listings, and animated financial graphs and displays depicting current business trends. The topic of each informational display is indicated along the top border of the text box, along with additional currency and market indexes and the current time.

This unique multi-media format was designed for one express purpose: to provide viewers a news and information resource that is fully accessible without the need for an audio track. Indeed, BIT's primary goal was to create a service that could be used in the workplace, where audio would be inappropriate. Thus, unlike other services which intersperse graphic information with

⁴ See the pictorial detail of each text box, attached hereto as Exhibit B.

programming that is entirely non-graphic, the BIT "L" is displayed on the screen at all times, including during commercial advertising. Graphic aids such as subject tabs and page numbers inform viewers not only of what is currently on the screen, but also the topics of upcoming information. Such features ensure that the "L" is easy to read and fully accessible to viewers without the need for audio.

Moreover, unlike simple sports or stock tickers, the "L" is content intensive, using every portion of the graphic to provide its continual scroll of real-time news, weather, and financial information. For example, the news and human interest text box does not simply provide news headlines, but displays entire 3-4 page story capsules covering all the days events. Similarly, the financial text box not only covers market information, but also provides clear and easy to understand graphics depicting Bloomberg's own analysis of current business and financial trends. Thus, while the "L" takes up a clearly dominant portion of the screen space, it represents an even greater portion of the total content conveyed by the BIT service.

Indeed, the only information conveyed by the BIT service which is not already accessible to the hearing impaired is the audio feed accompanying the full-motion video quadrant of the BIT screen. However, this video quadrant was designed as a minority facet of the multi-media BIT service for the purpose of reaching those viewers who find audio information more accessible than the

highly concentrated textual information provided on the "L." Moreover, most of the information conveyed by this audio track is duplicative of the information provided in the "L." Thus, the audio track accompanying the full-motion video quadrant is not essential to the overall content and understanding of the BIT multi-media programming and does not alter the fact that the BIT programming is fully accessible without audio.

For these reasons, BIT is widely used without any audio transmission whatsoever. Many business and financial executives use the service at work, with the sound turned off. BIT also is employed in a variety of other contexts where audio transmission is either unavailable or inappropriate, such as airports, bars, hotels, exercise studios, and government office buildings. For example, BIT is displayed on an approximately 10-foot wide video screen without sound at the arrival terminal of Pennsylvania Station in New York City. Such examples make BIT a unique service which, by using the textual and graphic intensive "L" as its primary and dominant means of conveying information, is fully accessible to hearing impaired consumers without the need for closed captioning.

2. Closed captioning would actually detract from the accessibility and value of the BIT programming to the hearing impaired.

Because BIT's "L" provides nearly all the information available through the BIT service, closed captioning would actually detract from the overall value of BIT to the hearing

impaired viewer. Under current closed captioning technology, BIT cannot close caption in a readable fashion without covering up a substantial portion of the "L" and/or video quadrant.⁵ As shown in Diagram B below, such captioning would lead to one of two undesirable results:⁶ 1) blocking the entire lower leg of the "L," including all financial and weather information; or 2) blocking the entire upper left leg of the "L" (which provides all the international, national, and general news captions) and nearly the entire video quadrant of the BIT screen to which the closed captions would pertain.

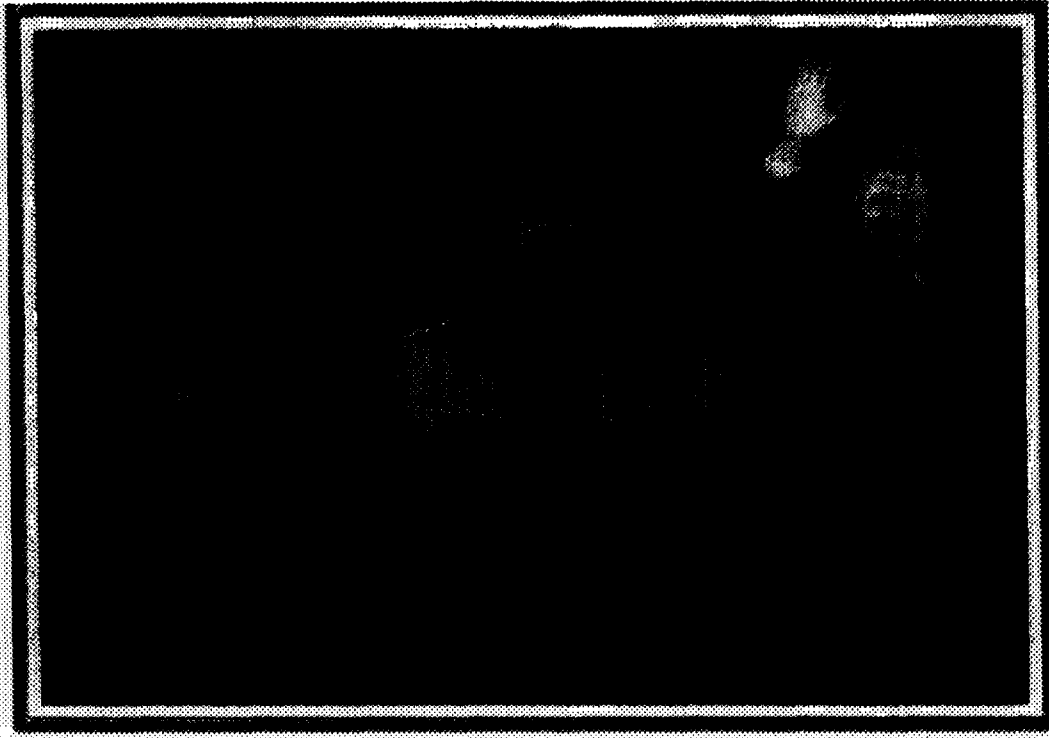
⁵ See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report, MM Docket No. 95-176, 3 Comm. Reg. (P&F) 1058, ¶ 40 (1996) ("Congressional Report") (noting that currently viewers have no ability to customize closed captioning to fit a particular type of format). Although closed captioning can be placed via tabs in only a portion of the width of the television screen, the resulting closed captioning would be unreadable. According to the National Captioning Institute ("NCI"), the captioned words could not remain on the screen long enough for someone to read them due to the speed of the spoken word and the delay in transmitting real-time captioning. Moreover, there is no prospect of improved technology which would better accommodate the BIT service in the near future. See id. at ¶ 41 (noting that although Advanced Television technology may provide enhanced methods of captioning, such technology may not be available for many years).

⁶ Although it is technically possible to place the closed captioning bar at other places on the screen (such as across the middle), these two placements are the standard options invariably offered to programmers as they are the least disruptive to the programming content. Moreover, placing the closed captioning bar across the middle of the screen still would substantially disrupt the "L" and result in an overall reduction in information for the hearing impaired.

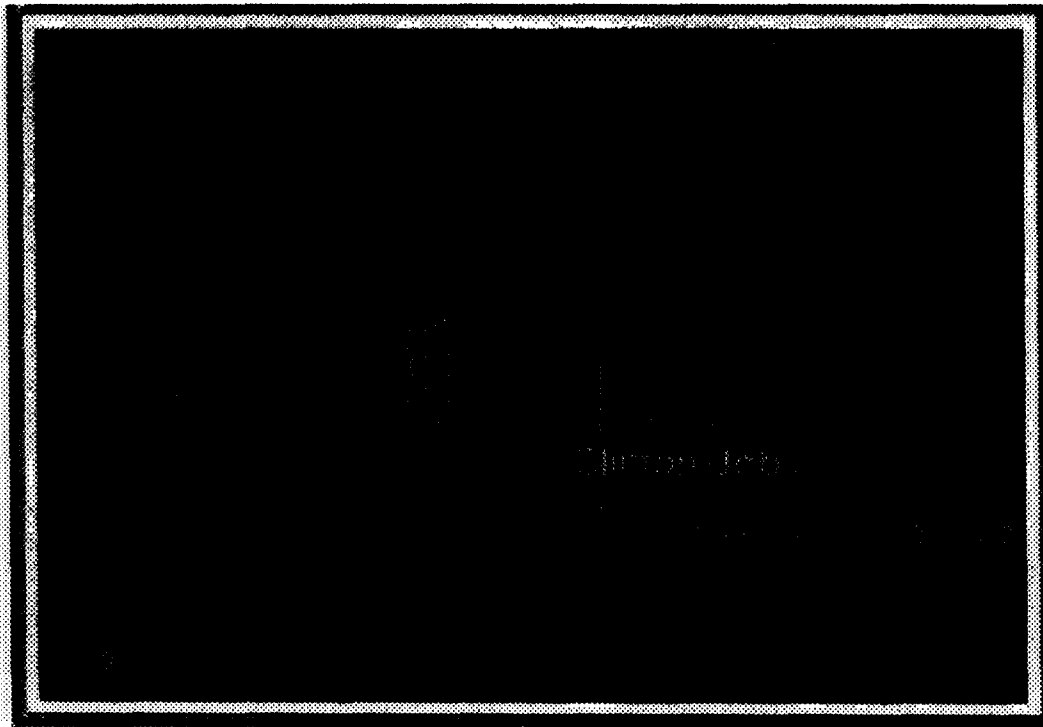
DIAGRAM B:

THE EFFECTS OF CLOSED CAPTIONING ON THE BIT SCREEN

Scenario 1



Scenario 2



In either case, closed captioning would deprive hearing impaired viewers of far more information than that provided in the captions.

Furthermore, the Commission has recognized that in some contexts, such as live and real-time programming, "it may be virtually impossible to meet very high levels of accuracy."⁷ As the Commission noted in its Congressional Report:

there are often errors in captions, including misspelled words, incorrect grammar, poor timing, inaccuracies and poor placement. Captions do not always match what the speaker is saying. Sometimes they are out of synchronization with the audio portion of the program. Accuracy is a problem, particularly with real time captioning.⁸

Such inaccuracies not only would reflect poorly on BIT's programming and reputation, but also would detract from the highly accurate information contained in the "L." BIT's hearing impaired viewers currently receive a great deal of valuable and accurate information with the textual "L." Inaccurate and incomplete information contained in a closed captioned video quadrant would only confuse and mislead hearing impaired viewers.

Thus, closed captioning would actually make BIT less accessible to the hearing impaired, not more. For this reason alone, it clearly would be in the public interest to exempt BIT from any closed captioning requirements.

⁷ Notice at ¶ 114.

⁸ Congressional Report at ¶ 91.

B. The Cost Of Closed Captioning For BIT Would Be Prohibitive.

1. BIT is an emergent, independent news and information service with limited ability to generate revenues.

As a new, independent service in the highly competitive business of news and public affairs programming, BIT faces especially challenging financial hurdles. In its first three years of existence, BIT has made slow but steady growth, gaining MVPD distribution to 3.5 million U.S. subscribers (approximately 3.5 percent of all U.S. television households). However, it is crucial that this growth continue. It has been estimated that a new programming service needs as many as 15-20 million subscribers to achieve stable profitability.⁹ Without a more substantial subscriber base, BIT has little or no ability to generate the license fee and advertising revenues essential to BIT's long-term survival.¹⁰

⁹ See "Tales of Network Deals and Launches (Real, Imagined & Surreal)," Cable TV Programming, Paul Kagan Newsletter No. 217, May 20, 1996, p. 2 (noting the inability of recently launched independent networks to achieve consistent profitability without reaching at least 15-20 million television households).

¹⁰ The Commission has recognized the difficult economic dynamics faced by start-up news programmers. New England Cable News, Memorandum Opinion and Order, 9 F.C.C.R. 3231, ¶ 36 (1994) ("NECN") ("The limited extent of the target market . . . reduces potential revenues from distribution as well as advertising"). See also "Affiliate Fees: The Price of Exclusivity," Cable TV Programming, Paul Kagan Newsletter No. 213, January 26, 1996, p. 2 (noting the necessity of gaining license fee revenues through a substantial subscriber base in order to avoid negative cash flows).

For several reasons, such growth will be difficult. First, as the Commission has recognized, news and information services such as BIT, though vital to the public interest, are naturally in a "more precarious financial condition than that of other competing programming services that enjoy broader audience appeal."¹¹ This disadvantage has been exacerbated by the recent entry of heavily financed news competitors such as the Fox Newschannel and MSNBC.

Second, unlike the Fox Newschannel and MSNBC, BIT is a truly independent programming entity, unaffiliated with any television network, MVPD, or other video programming distribution entity. As a result, BIT lacks the leverage to obtain carriage on cable systems and other MVPD platforms, especially during the current channel capacity crunch.¹² Channel capacity problems are more acute today due to the current regulatory environment which the Commission has recognized still poses difficulty for independent programmers "in persuading many cable operators to add . . . a new service on their systems."¹³ As has been well documented,

¹¹ NECN at ¶ 36.

¹² See "NewsTalk TV Isn't The First CableNet to Shut Down, Won't Be The Last," Cable TV Programming, Paul Kagan Newsletter No. 222, October 31, 1996, p. 2 (noting the inability of independent programmers to survive due to current channel scarcity).

¹³ NECN at ¶ 35.

this difficulty has caused most independent programming services launched in the 1990s to fail within their first five years.¹⁴

For these reasons, BIT can ill afford to absorb the added financial burdens closed captioning would impose. Like most new programming services, BIT is operating at a loss and will probably continue to do so for the immediate future. As the Commission has found, "[i]t is not uncommon for new programming services to sustain losses for long periods of time,"¹⁵ due to the significant "[p]lanning and development costs [that] are incurred during the initial stages of any new service deployment."¹⁶ Thus, BIT must focus all of its financial resources on gaining a larger subscriber base so that its product has an opportunity to survive and fairly compete for viewers. Because, as discussed in the next section, the costs of closed captioning are substantial in general (and would be particularly significant for BIT), failure to grant an exemption would increase the risk that BIT, like other new programming services, will be unable to sustain itself as a viable source of innovative, high-quality news and information programming.

¹⁴ "NewsTalk TV Isn't The First CableNet to Shut Down, Won't Be The Last," Cable TV Programming, Paul Kagan Newsletter No. 222, October 31, 1996, p. 2 (documenting the continuing trend of independent programming services going black within five years of launch).

¹⁵ NECN at ¶ 35.

¹⁶ Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, Memorandum Opinion and Order, 10 F.C.C.R. 11,292, ¶ 30 (1995).

2. Closed captioning would be particularly costly for BIT.

Because of BIT's highly limited ability to absorb additional financial burdens, the substantial costs of closed captioning for BIT would be prohibitive. BIT presents approximately 400 minutes of original programming per day, interspersed throughout the programming schedule. Nearly all of this programming consists of topical news coverage which is delivered live or within minutes of being taped. Moreover, because BIT is an up-to-the-minute news service, nearly all of its programming is time sensitive.

BIT estimates that, at a minimum, it would have to employ real-time captioning for 12 hours a day.¹⁷ Real-time captioning imposes significant costs. The Commission has estimated that real-time closed captioning would cost between \$120 and \$1,200 per hour.¹⁸ BIT would insist on obtaining high-quality captioning in order to protect its reputation and because accuracy is particularly important for news programming. Based on conversations with NCI, a price of \$400 per hour would be the

¹⁷ While the Notice points to Electronic Newsroom (ENR) captioning as a low-cost way of closed captioning, ENR does not meet BIT's captioning needs because within each 1/2 hour of the BIT service, a substantial portion of the programming is not scripted or placed on a teleprompter, but rather consists of taped or live news stories. See Notice at ¶ 21. While BIT may be able to use off-line captioning for some of these segments, such off-line captioning is typically more expensive than on-line stenocaptioning. See Congressional Report at ¶ 46. Thus, BIT's stenocaptioning estimate is provided as a conservative minimum average cost estimate.

¹⁸ Notice at ¶ 20.

minimum necessary to meet this quality standard. BIT's cost for real-time captioning would therefore be approximately \$1.75 million per year (12 hours x 365 days). Obviously, costs even approaching this figure would have a debilitating impact on BIT's limited financial resources.

Closed captioning would impose other burdens on BIT, as well. For example, any Commission regulation would, at a minimum, require BIT to hire both legal and administrative personnel to monitor and ensure closed captioning compliance and answer any challenges to BIT's compliance with the closed captioning rules.¹⁹ When added to the economic costs described above, the total costs of closed captioning would detrimentally impair BIT's ability to remain a viable programming entity.

C. Failure to Exempt BIT From Closed Captioning Would Be Directly Contrary To Congressional Intent.

1. Congress specifically granted the Commission authority to exempt services for which closed captioning would be "economically burdensome."

In passing Section 713, Congress gave the Commission authority to exempt certain programming from the closed captioning requirements upon a finding that close captioning would be "economically burdensome."²⁰ More importantly, Congress

¹⁹ Although the Notice initially proposes to impose the direct responsibility for compliance with the closed captioning requirements on the programming distributor, even the Commission recognizes that the actual day-to-day responsibility for ensuring programming is closed-captioned will fall on the program provider. See id. at ¶ 30.

²⁰ See 47 U.S.C. § 613(d)(1).

intended that the Commission use this power whenever the imposition of closed captioning would be unreasonable. As Congress stated:

the Committee recognizes that the cost to caption certain programming may be prohibitive given the market demand for such programs and other factors. Accordingly, the Commission shall establish reasonable. . . exceptions for implementing this section.²¹

Congress directed the Commission to consider several factors in considering exemptions, including: (1) the nature and cost of providing closed captions; (2) the financial impact on operations and programs; (3) the financial resources of the provider; (4) the cost of captioning relative to market penetration, audience share or local/regional production; and (5) the existence of alternative means of providing access to the hearing impaired.²² As the Commission has stated, if the balance of these factors outweigh the benefits of closed captioning, then the "economically burdensome" test has been met and an exemption must be granted.²³

BIT is precisely the type of service Congress intended to be exempt from closed captioning. Indeed, all the applicable factors delineated by Congress dictate that BIT be exempt. As BIT has shown: 1) the cost of closed captioning the BIT service

²¹ House Report at 114 (emphasis added).

²² H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., 183 (1996).

²³ Notice at ¶ 70.

would be prohibitive; 2) the financial impact of such costs would draw into question BIT's viability; 3) BIT is a new and independent programmer with no additional financial resources to devote to closed captioning;²⁴ 4) BIT has a highly limited market penetration and audience share;²⁵ and 5) BIT provides full alternative access to subscribers through the graphic depiction of information on the "L." Perhaps most important, there is absolutely no countervailing benefit of closed captioning to weigh against these overwhelming factors; as BIT has shown, closed captioning of BIT would actually detract from the accessibility and value of BIT to the hearing impaired. Thus, the economic burden of captioning BIT far exceeds any benefit derived from closed captioning the BIT service, thereby mandating that an exemption under the economically burdensome test be granted.²⁶

²⁴ In considering this factor, the Commission must limit its analysis to the financial resources of BIT, not its parent or any affiliate. Congress was clear that "[w]hen considering such exemptions [to closed captioning requirements], the Commission should focus on the individual outlet and not on the financial conditions of that outlet's corporate parent, nor on the resources of other business units within the parent's corporate structure." House Report at 114-115 (emphasis added).

²⁵ Indeed, as a national programming service with fewer than 5 million subscribers, BIT's audience shares are not even rated by the Nielsen rating service. Comments of the National Cable Television Association, MM Docket No. 95-176, at 13 (filed March 15, 1996).

²⁶ Notice at ¶ 70.

2. An exemption for BIT is consistent with the long-standing congressional goal of promoting diverse, new sources of information.

The development of new and diverse programming has always been a central tenant of Congress' telecommunications policy and Congress has repeatedly enacted statutes to promote that goal. Exempting BIT from closed captioning is fully consistent with the overarching duty these statutes place on the Commission to enhance and promote the growth and diversity of new programming sources. As the Commission has recently stated, "it is the policy of the [Communications] Act to 'encourage the provision of new technologies and services to the public'".²⁷ In the specific area of video programming, the language of the Communications Act spells out a similar directive to "provide the widest possible diversity of information sources and services to the public."²⁸ This firm mandate is reiterated in the 1992 Cable Act, which requires that the Commission's regulation of video services "promote the availability to the public of a diversity of views and information."²⁹

As the Commission has recognized, these provisions, and the Communications Act in general, impose the direct obligation to

²⁷ Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Notice of Proposed Rulemaking, CS Docket No. 97-80, FCC 97-53, ¶ 48 (released February 20, 1997).

²⁸ 47 U.S.C. § 521(4).

²⁹ The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1450, § 2(b)(1) (1992).

ensure that its regulations promote, rather than hinder, new and diverse sources of video programming.³⁰ As a result, the Commission has consistently taken special steps to provide regulatory relief from otherwise applicable regulations in order to "encourage and promote . . . new and innovative media partnerships and program services."³¹ In the case of independent news services such as BIT, the Commission's duty to provide such relief is all the more heightened due to the valuable public interest in facilitating diverse sources of news and information.³²

³⁰ See, e.g., Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, Sixth Order on Recon., Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket No. 92-266, MM Docket No. 93-215, 10 F.C.C.R. 1226, ¶ 64 (1994) ("Our new rules will benefit consumers by assuring that operators will have incentives to add new services..."); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order and Second Order on Recon. of the First Report and Order, CS Docket No. 96-60, FCC 97-27, (released Feb. 4, 1997) ("Section 612 expressly states that its purposes are twofold: to assure that the public has access to the widest possible diversity of information sources carried on cable systems, and to promote competition in the delivery of diverse sources of video programming."); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979, 981 (Commission chronicles its historical policies of promoting diversity of programming "which is a key objective not only of the Communications Act of 1934 but also the First Amendment"); NAACP v. Federal Power Commission, 425 U.S. 662, 670 n.7 (1976) (Commission regulations "can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 ... to ensure that its licensees' programming fairly reflects the tastes and viewpoints of [diverse] groups").

³¹ NECN at ¶ 40.

³² Id. See also Citizens Communications Center v. F.C.C., 447 F.2d 1201, 1213 n. 36 (D.C. Cir. 1971) ("one very significant

Exempting BIT from the closed captioning requirements would be fully consistent with this established policy. BIT's multi-media, multi-informational service is a new and innovative means of providing up-to-the-minute information in a manner uniquely accessible to certain segments of the population, including the hearing impaired. However, without relief from the closed captioning requirements, BIT's ability to provide this new and valuable service would be seriously threatened. Therefore, the Commission should exempt BIT from the closed captioning requirements in order to ensure BIT's growth as valuable source of news and information programming.

IV. THE COMMISSION ALSO SHOULD ADOPT A CLASS EXEMPTION FOR "PRIMARILY TEXTUAL" SERVICES.

BIT supports the Commission's proposed "primarily textual" exemption.³³ As the Commission tentatively concluded, such a class exemption is warranted because for such services the "information is already provided visually, with little or no relevant audio track."³⁴

As demonstrated above, the closed captioning of services such as BIT, which convey information primarily through text, is unnecessary to the accessibility of such programming to the hearing impaired. Indeed, BIT provides such a vast amount of

aspect of the 'public interest, convenience and necessity' is the need for diverse and antagonistic sources of information").

³³ Notice at ¶ 73.

³⁴ Id.

information through the high-density text and graphics provided in the "L" portion of the BIT screen, blocking such information with closed captions would actually detract from the value of the service to hearing impaired viewers. Thus, BIT submits that it should be exempt from the closed captioning requirements no matter what definition of "primarily textual" the Commission eventually adopts.³⁵

However, BIT urges the Commission not to adopt a narrow definition of primarily textual that would exclude multi-media services which, although not 100% textual, are clearly accessible through text without the need for closed captioning. Services that convey most of their information through graphics and text should be exempt, even if they also offer a small full-motion video segment which is accompanied by an audio track. While such a video and audio segment may not be entirely superfluous, if it is clearly secondary to the graphic depiction of information or largely duplicative of information available through text, the exemption should be available. It would be both arbitrary and unreasonable to deem BIT as not "primarily textual" simply because it chose to offer a secondary means of conveying information.

In light of these concerns, BIT submits the following definition of "primarily textual" programming that would be

³⁵ See Section II.A.1 & 2.

exempt from closed captioning:

Programming that relays information primarily through text, charts, graphs, and other visual means, with audio a secondary, ancillary, or non-existent source of information.

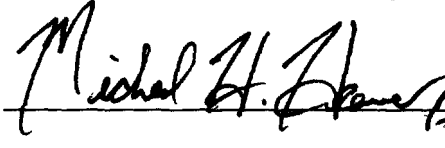
This definition encompasses not only program guides and bulletin boards which are 100% textual, but also multi-media programming services like BIT, which, although providing some audio, convey the vast majority of their content through text. At the same time, such a definition excludes services and programs which may provide intermittent textual information, but nonetheless rely primarily on audio to convey essential information. In this manner, the Commission can prevent closed captioning requirements from being unnecessarily imposed on textual services which already meet Congress' goal of being accessible to the hearing impaired.

CONCLUSION

It is clear that Section 713 neither mandates nor intends that closed captioning requirements be imposed on services such as BIT, which are already accessible to the hearing impaired. Forcing BIT to closed caption would not only reduce the accessibility of BIT's programming to the hearing impaired, but would also endanger the continued viability of a new and innovative source of informational programming. Accordingly, BIT respectfully requests that it be granted an exemption from any closed captioning requirements.

Respectfully submitted,

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